

RECORD OF COMMUNICATION		PHONE CALL	X	CONFERENCE	DATE: 4-12-94
		DISCUSSION		FYI	TIME: 8:00 a.m.
TO: Files					
FROM: Ron Van Wyk					
SUBJECT: Meeting concerning proposed Osage Regulation Change					

SUMMARY: Gus Chavarria, Rich Wooster, and I met with Messrs. Al Havinga, ODW, and Jim Curtain, OGC, at the Inn at Foggy Bottom in Washington, D.C. to discuss the status of proposed plugging and abandonment regulations for the Osage Mineral Reserve. During the meeting, we discussed the history of our efforts to change the regulations, the purpose of changing the regulations, and HQ concerns about the regulation as proposed.

Mr. Chavarria pointed out that we were simply proposing regulations that would be virtually identical to Generic regulations at 40 CFR §144.28. Also, we would like for the regulations to be changed because we are now and have been since 1990 noncompliant with Osage UIC regulations in that we are not requiring inactive injection wells to have mechanical integrity.

The Osage regulations were developed to address Osage concerns at the time of regulation promulgation. However, the requirement that inactive wells either be plugged or have mechanical integrity is now a concern to the Osage Tribe. This is because they believe that any open hole, that is not an environmental hazard is an asset if the price of oil increases. At the time of regulation development, it was generally believed that the price of oil would increase to make holes temporarily abandoned in 1984 useful by 1989 when the MIT requirement would kick in. Also, it was difficult to determine exact thinking that went into the original regulation since all that were involved in regulation development were now gone. However, it could be surmised that we never intended that wells that could be useful for the production of oil would be prematurely plugged. We now believe that the requirement to do MITs on temporarily abandoned wells is a mistake and we have full support of the Tribe.

We also emphasized that current procedures assure that there will be no environmental threat to ground water if the wells do not have mechanical integrity. Our fluid level monitoring program applicable to temporarily abandoned wells, field presence, and enforcement efforts were discussed at length.

Messrs. Havinga and Curtain were sympathetic to our concerns. However, given the facts that there had been no outside pressure (e.g. environmental groups) it was unlikely that it would become a HQ priority. They agreed that current procedures made it unlikely that temporary abandoned wells in Osage County would be a hazard to USDWs. Mr. Curtin pointed that even if the regulations were not changed, the Region had considerable "enforcement discretion" which would allow us to continue current procedures. Mr. Curtin noted that we are in fact taking considerable measures (e.g. fluid level monitoring requirements on operators, field inspectors shooting fluid levels, enforcement if high fluid levels are noted, etc.) to show that we are not completely ignoring the regulations. These measures should be adequate to demonstrate that we are assuring that USDWs are protected. In short, as long as we would be comfortable defending our non-enforcement

to an outsider (e.g. press, GAO, etc.), we could argue that we had properly exercised "enforcement discretion". He mentioned that "enforcement discretion" does not mean that we can completely ignore the intent of a requirement.

We finally discussed the possibility that we make a "technical" change to the regulation. Such a change would add the words "unless waived by the Regional Administrator" to the end of 40 CFR §147.2905(a). Mr. Havinga said that he would check with contacts in the Office of Enforcement to determine whether such an approach was feasible or could be done outside the normal regulatory process. However, this was much more likely than getting a regular regulation change completed in the near future.

CONCLUSIONS/ACTIONS

Al will get back to Gus within the next couple of weeks to give us additional advice on what we should do.

COPIES TO: Chavarria, Wooster